



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 2188-99

31 May 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 30 September 1976 at the age of 17. Your record shows you served for a year without incident but on 7 November 1977 you received nonjudicial punishment (NJP) for possession of marijuana and were awarded a \$300 forfeiture of pay, restriction and extra duty for 45 days, and reduction to paygrade E-1.

Your record further shows that on 13 December 1979 you submitted a written request for an undesirable discharge for good of the service in order to avoid trial by court-martial for a 371 day period of UA. Prior to submitting this request, you consulted with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 9 January 1980 you were so discharged.

The Board, in its review of your entire record and application considered all mitigating factors, such as your youth and immaturity and your contention that enough time has gone by and you would like your discharge upgraded. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your drug related misconduct, lengthy period of UA, and your request for discharge to avoid trial. The Board noted that no discharge is upgraded merely because of the passage of time. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request was granted and you should not be permitted to charge it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director